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July 29, 1994

VIA FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: CC Docket No. 92-77

Dear Mr. Caton:

Transmitted herewith on behalf of AMERICAN NETWORK EXCHANGE, INC. is an original and four (4) copies of AMNEX'S Comments in the above-referenced docket.

Please date stamp the enclosed extra copy of this letter and return it to me in the self-addressed, stamped envelope which is provided.

Should you have any questions in regard to this matter, kindly contact the undersigned.

Sincerely yours,

Amy S. Gross
Vice President - Legal & Regulatory

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

COMMENTS OF AMERICAN NETWORK EXCHANGE, INC.

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Dated: August 1, 1994

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Summary of Comments

The Commission should not adopt billed party preference. Instead, it should deal with the real consumer problem raised in the Further Notice -- the high rates at some aggregator locations. The Commission should move quickly to adopt benchmark rates for each type of operator assisted call. Rates below those benchmarks would be presumed lawful and would be allowed to go into effect on one days notice; carriers seeking to charge rates above the benchmark would be allowed to justify those rates through a modified rate of return proceeding.

Implementation of BPP would represent a fundamental restructuring of not only the operator service industry, but also the broader interexchange marketplace. It is completely inconsistent with the goal of fostering local exchange competition. Moreover, BPP threatens to drive small competitors, both regional and product or niche specific, from the marketplace, leaving only the three largest carriers as the non-LEC operator service providers at transient locations and the only wholesale providers of nationwide originating access for resale carriers.

On balance, the technical, operational, financial and competitive costs associated with BPP outweigh the questionable benefits to be gained. For instance, the implementation cost estimates in the Further Notice are understated by at least \$200 million dollars. Similarly, the consumer savings from BPP are overstated by tens of millions of dollars. Accordingly, BPP will not in fact deliver cost savings which exceed its implementation costs, thereby eliminating any economic justification.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Billed Party Preference)	CC Docket No. 92-77
For 0+ InterLATA Calls)	

COMMENTS OF AMERICAN NETWORK EXCHANGE, INC.

American Network Exchange, Inc. ("AMNEX")¹, by its attorney, hereby files these Comments in response to the Further Notice of Proposed Rulemaking in the above-captioned docket concerning the implementation of billed party preference ("BPP").²

AMNEX supports the Commission's efforts to refocus competition in the operator services marketplace away from the aggregator and towards the end user placing the call. However, implementation of BPP would completely eliminate the competitive public communications industry as we know it today and would have far reaching effects on the broader interexchange marketplace. On balance, the technical, operational, financial and competitive costs associated with billed party preference outweigh the questionable public benefits to be derived from its implementation, especially considering that less costly alternatives exist.

¹ AMNEX (formerly known as NYCOM Information Services, Inc.) is a Florida-based carrier offering a broad spectrum of standard and enhanced calling features and information delivery capabilities designed to meet the needs of telephone users who are away from the home or office. AMNEX's goal is to deliver the most enhanced telecommunications and information services to the growing number of sophisticated business users, thereby optimizing their efficiency from virtually any telephone.

² Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, FCC 94-117, released June 6, 1994 (hereinafter, the "Further Notice").

Moreover, it is completely inconsistent with the goal of fostering local exchange competition.

Accordingly, the Commission should not adopt billed party preference. Instead, it should deal with the real consumer problem raised in the Further Notice -- the high rates at some aggregator locations. The Commission should move quickly to adopt benchmark rates for each type of operator assisted call. Rates below those benchmarks would be presumed lawful and would be allowed to go into effect on one days notice; carriers seeking to charge rates above that benchmark would be allowed to justify those rates through a modified rate of return proceeding.

I. Introduction and Background

The instant Further Notice concludes that the evidence thus far accumulated in this proceeding supports a conclusion that the benefits of billed party preference outweigh the costs. However, it concedes that the record closed two years ago and that the data is therefore "not as precise or current as we would like". Further Notice at ¶2. Accordingly, further comment is sought.

The Further Notice identifies three main benefits to be derived from billed party preference: 1) it would simplify operator service ("OS") calling by relieving customers of the need to dial access codes, saving them \$280 Million a year by eliminating the risk that their call will be carried by a carrier with high rates. Id. at ¶10; 2) it would redirect the choice of OSP from the aggregator or premise owner to the consumer, thereby shifting the competitive focus from the premise owner to the end user. The

Commission expects that this will "likely result in lower rates and better service" and will "almost certainly eliminate 0+ commissions and thus significantly reduce OSP costs, thereby offsetting a substantial portion of the costs of BPP itself" and saving consumers \$340 Million a year. Id. at ¶12; 3) it would reduce AT&T's advantages in the 0+ market, by, for example, enabling other carriers to offer end users the same 0+ access ATT does, thereby leveling the competitive playing field and removing an existing competitive advantage enjoyed by ATT. Id. at ¶14-15.

The Further Notice concludes that, if implemented, BPP should apply to all 0+ and 0- interLATA calls on a nationwide basis, including business and residence phones and phones served by independent LECs. Id. at ¶47-49. IntraLATA 0+ and 0- calls will continue to route automatically to the LEC unless state commissions order BPP on an intraLATA basis. Id. at ¶19. A separate balloting would be held to select the 0+ PIC, but there would be no allocation. Instead, customers will be defaulted to their 1+ carrier if no separate 0+ carrier is PIC'd. Id. at ¶65-67.

II. BPP's Costs Outweigh its Benefits

Despite its lofty intentions when proposed more than six years ago, BPP is still largely theoretical and its implementation will require considerable technical development by both the LECs and IXC's and will entail tremendous expense and substantial lead time. Once implemented, BPP will do little, if anything, to foster innovation and competition in the interexchange marketplace, and, even assuming it will result in lower rates for some consumers,

will do so less efficiently that would the imposition of rate benchmarks on operator assisted calls.

A. The Anticipated Consumer Savings are Overstated And Can Be Achieved Through Less Costly Alternatives

The Further Notice's conclusion that the benefits of BPP outweigh its costs rests almost entirely on the calculation that consumers will save \$200 Million a year if BPP is implemented (\$620 Million savings in rates and commissions as against \$420 Million in implementation costs). Id. at ¶ 36. However, this conclusion rests on fragile assumptions and overlooks less costly alternatives which will achieve the same result.³

First, the implementation cost estimates contained in the Further Notice appear to be understated by millions of dollars. For instance, no LEC overhead costs are included, even though the Further Notice, at note 44, concedes that LECs will seek to include such costs and estimates them to be an additional 25% (plus a rate of return factor). Additionally, because 14 digit screening is a competitive necessity, these costs, estimated to be as high as \$15 Million per LEC⁴, must also be included in the analysis. Moreover,

³ An important point overlooked by the Further Notice is that many people living close to the poverty line do not have an interLATA PIC. While the reasons for this vary, these subscribers are equally unlikely to select a 0+ PIC and will have no 1+ PIC to which to default. However, these same consumers rely most heavily on public payphones to place their long distance calls. Under BPP, these consumers would be unable to make any long distance calls at all. Thus, for these customers in particular, BPP would result in increased confusion and more importantly, denial of service. Rate caps, on the other hand, would protect these consumers without adding any unnecessary confusion.

⁴ Id. at ¶71.

the Further Notice fails to account for all IXC implementation costs, including nationwide balloting and marketing, switch upgrades to accommodate SS7 and related signalling and increased access costs due to the loss of trunking efficiencies. (See discussion in Section E, below). Finally, the Notice totally ignores the stranded investment costs which will be experienced by aggregators who have spent millions of dollars retrofitting and/or unblocking their terminal equipment to allow 10XXX and other forms of access code calling in compliance with Section 64.704 of the Commission's Rules. 47 CFR §64.704 (1992).⁵ Just the additional LEC costs for overhead and 14 digit screening will exceed \$200 Million, totally erasing the savings estimated in the Further Notice.

Second, the cost savings to be recognized through BPP are overstated by tens of millions of dollars. It does not appear that the rate comparisons utilized by the Commission included premise fees collected by either the site location on its own behalf or by AT&T, MCI or Sprint on behalf of the aggregator location. However, these charges were probably included in the revenue numbers

⁵ Indeed, imposition of BPP on privately owned payphones would have a disastrous effect on the manufacturers of payphones for this industry. Manufacturers of, for example, store and forward phones, would find their products incompatible with the billed party preference system and be put out of business almost immediately. The exit of these American manufacturers would have ripple effects both domestically and internationally, contributing to expanding the trade deficit. And, if manufacturers exit the marketplace, private payphone owners across the country will eventually be forced to remove the over 350,000 new phones they have installed across the country because they could no longer be maintained or upgraded.

provided by the smaller carriers surveyed. Additionally, the IXC revenue data which formed the basis for the comparison included revenues from only 0+ traffic.⁶ However, 0- calls are the most expensive kind of operator assisted calls and are often subject to a special surcharge. Indeed, AT&T adds a \$1.00 service charge⁷ on all such calls which, in AMNEX's experience, account for 25% of all completed calls. While AT&T charges extra for 0- calls, to the best of AMNEX's knowledge, most OSPs follow the same practice that it does and charge the same for all live operator calls regardless of whether they are dialed on a 0+ or 0- basis. Thus, by ignoring 0- calls, the Bureau's rate comparison not only fails to take into account rates associated with 25% of all calls, but also ignores calls on which the price differential is likely to be the least.

Finally, since the Further Notice cites higher commission payments as being the root cause of higher OSP rates, by calculating consumer savings based on both relief from high rates and the elimination of commission payments, the Notice in effect double counts the alleged consumer savings associated with BPP (i.e., counts the same commissions once as a cause of high rates and a second time on a stand alone basis). Accordingly, the cost differences relied on in the Further Notice, as well as the resulting consumer savings, are overstated. BPP will not in fact deliver cost savings which exceed its implementation costs, thereby

⁶ Responding carriers seeking clarification were told not to include revenue from 0- calls.

⁷ This charge was \$.75 in 1991.

eliminating the economic justification.

Even assuming arguendo that the Commission's cost analysis is sound, the mere fact that some⁸ percentage of consumers may save money on some calls is not a legally sufficient basis for going forward with a technology which threatens to fundamentally change the competitive long distance industry. Instead, any cost benefit analysis must give at least as much weight to the competitive effects, especially in light of the rapidly changing regulatory environment. This is particularly true where, as here, less costly alternatives exist.

If the Commission's principle rationale for adopting BPP is the high rates charged by some carriers and/or the large commissions demanded by aggregators (often in the form of premise imposed fees or service charges which go directly to the aggregator and are not shared by the OSP), then the Commission should address that problem head on by determining reasonable rates for each class of operator assisted call.⁹ Such determination can be made by reference to the rates already on file with the Commission, perhaps using the big three carriers as benchmarks from which reasonable

⁸ This percentage is expected to be small indeed. A 1991 Frost & Sullivan study showed that, in 1991, 80% of all calls were already billed by the preferred carrier and that at best only 19% of all calls would benefit from BPP. Report on Applicability and Costs of Billed Party Preference: A Market Impact Report, Frost & Sullivan, Inc., October 1993, filed as an ex parte filing in CC Docket No. 92-77 on Nov. 22, 1993. Using the Commission's own assumptions as to the percentage of consumers exposed to high rates, BPP is needed for only 5.5% of all OS calls. Id. at ¶11.

⁹ Sections 201 and 226 of the Act, 47 U.S.C. §§201 (b) and 226 (h)(4)(A) provide ample legal authority for such action.

rates can be determined (i.e., the highest of their rates for a particular call plus a percentage or dollar amount). Rates below the adopted benchmarks would be presumed lawful and would be allowed to go into effect on one days notice¹⁰; carriers seeking to charge rates above that benchmark would be allowed to justify those rates through a modified rate of return proceeding.

This will address the real rationale for BPP -- protecting consumers from high rates -- without causing the competitive harms described below. Most importantly, it can be accomplished far sooner than BPP can be implemented¹¹ while serving the identical goals. And, it will maintain and strengthen the competitive public communications marketplace.

B. TOCSIA Is Working To Assure Access to the Consumer's Carrier of Choice

The Further Notice, at note 3, recognizes that in its Final Report to Congress under TOCSIA the Commission concluded that the requirements of the Act were effective in providing consumers with the opportunity to reach their carrier of choice and avoid high rates. That same report also concluded that the level of compliance with the consumer protection requirements of TOCSIA "is high and continues to improve" and that "consumers are being protected from unfair and deceptive practices relating to their use of operator services . . . and consumers have the opportunity to

¹⁰ These filings would be made subject to the Commission's existing tariff rules for Domestic NonDominant Carriers found at 47 C.F.R. §§61.20-23.

¹¹ The Further Notice, at ¶8, assumes BPP will be implemented June, 1997.

make informed choices in making such calls."¹² These choices have only increased since the FCC's Report was published, as carriers have introduced both prepaid calling cards (also know as debit cards) and new dial-around offerings such as 1-800-OPERATOR, 1-800-COLLECT and 1-800-CALL ATT. The latter offerings have particularly increased in popularity in the last year due to extensive advertising. The Report further concluded that OSPs were not making outrageous profits and predicted that dial-around would grow to 50% by 1997. Despite these findings, the instant Further Notice concludes that BPP is necessary in order to remedy the "remaining" problems by yielding additional benefits.

The Commission cannot have it both ways. Either TOCSIA is working or it is not. It can't work for purposes of reporting to Congress but then not be effective for purposes of determining whether the entire competitive framework of the OS marketplace should be dismantled. In fact, the Commission had it right the first time. TOCSIA is working to ensure that caller can access the carrier of their choice if and when they want to.

Importantly, dial-around has grown even faster than the Commission predicted in the Final Report: the 50% dial-around mark estimated for 1997 has already been met by the industry, with some locations reporting dial-around as high as 70%. Indeed, a recent APCC survey estimated that the average private phone experiences between 36 and 48 dial-around calls per month and that the number

¹² Final Report of the Federal Communications Commission, November 13, 1992 at 30.

of such calls doubled from October 1993 to April 1994.¹³ And, AT&T recently stated that "Our experience indicates that from April, 1990 through the beginning of 1993, awareness of dial-around procedures grew from about 30% awareness to about 60% awareness".¹⁴ Thus, by the time BPP is implemented, consumers will have become even more comfortable with the existing system, necessitating a re-training to dial "0+" in order to use BPP. This will actually increase confusion, rather than decrease confusion as the Further Notice anticipates.

While the Further Notice offers no substantiation for its conclusion that access code dialing is not accepted by the public the popularity (and profitability) of these "dial-around" services is evidenced not only by the growing number of such services tariffed at both the state and federal levels, but also by the frequency and variety of the ad campaigns for these services. Thus, the marketplace evidence supports the conclusion that the public accepts, even embraces, dial-around, and that consumers anxious to reduce their bills or assure themselves of their preferred carrier are ready, willing and able to do so. Clearly, the current regulatory environment, especially if coupled with benchmarked rates as proposed herein, will accomplish the identical goals as BPP but at a fraction of the price.

¹³ Per Call Dial Around Compensation: The Numbers Game, Perspectives Magazine, July/August 1994 at 11.

¹⁴ Comments of AT&T Communications of New England, Inc. in Massachusetts D.P.U. 93-118, dated July 22, 1994 at 3.

C. BPP Is Incompatible With Local Exchange Competition

Simply stated, BPP is inconsistent with today's regulatory reality and in fact is antithetical to the efforts of both state and federal regulators and the US Congress to introduce local exchange competition and establish a predicate for allowing the Bell Operating Companies to enter the interLATA/long distance marketplace.¹⁵ BPP interposes LEC operator services and switches on every interLATA call, placing the LEC between the IXC or CAP and its customer and virtually assuring the LEC a monopoly on intraLATA calling. This is unacceptable in an competitive environment.

Moreover, the uniform, upfront call handling required in a BPP environment masks the competitive differences between carriers and their services and therefore stifles competition and innovation. As such, it threatens to curtail the ability of IXCs to offer consumers innovative services and features at lower prices. Indeed, the very presence of the LECs' operator systems on interLATA calls may retard or prevent the introduction of products whose formats are incompatible with the LIDB system.

The existing travel/calling card marketplace, for instance, is highly competitive and robust, characterized by numerous carrier offerings with divergent price and service options. These include voice messaging, fraud control, special billing, personal speed

¹⁵ See, The Antitrust Reform Act of 1993, HR 3626, 103d Cong., 2d Sess. (June 1994); The National Communications Competition and Information Infrastructure Act of 1993, HR 3636, 103d Cong. 2d Sess. (June 1994); The Communications Act of 1994, S 1822, 103d Cong., 2d Sess. (Feb. 1994); Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91-141, 7 FCC Record 7369 (1992), 8 FCC Record 127 (1993).

dialing and access to databases containing information ranging from stock quotations to horoscopes. All of these enhancements are provided out of and are dependent upon the IXC's network and cannot be utilized until that network is accessed. All of these options are possible because the issuing carrier controls not only the integrity of the database, but also the entry of the call into its network via a direct access code. Interposition of the LEC network will result in a loss of service and cost flexibility, options and speed for the IXC's customers.

Additionally, consumers lulled into reliance on LEC billed party preference's 0+ dialing will soon be reluctant to try new services offered by competitors and which require the dialing of access codes.¹⁶ In fact, once BPP is implemented the marketplace will undoubtedly require carriers to issue cards compatible with 0+ dialing. Unless they do, IXCs will find it harder to gain public acceptance of their products and services. This will require the mass re-issuance of IXC calling cards and necessitate the complete re-arrangement of IXC networks, with the potential loss of card features and functionality. Such a result stifles innovation and adds unnecessary costs to IXC operations and rates.

With BPP virtually every card issuing carrier except AT&T and the LECs will have to reissue its existing cards and change its

¹⁶ By contrast, the present system encourages consumers to become familiar with access code dialing, thus removing the "mystique" and creating a more receptive consumer of public communications services. Such consumers are more likely to seek out and take advantage of new, innovative services, thus increasing consumer choice and spurring the marketplace to offer new and better services at lower prices.

dialing instructions in order to remain competitive. However, most carriers today issue calling cards which rely on 800 or 950 access. These cards typically contain the consumers' 10 digit telephone number (either residence or business) and a 4 digit PIN. Market research continues to confirm consumer preference for such cards.

Once implemented, however, BPP, if not coupled with a requirement of 14 digit screening, will force all carriers except the LECs to issue the less-attractive non-line number based cards. This provides the LECs and AT&T, who alone can continue to issue line number based cards in a BPP environment, with an important advantage in the marketplace -- an advantage which cannot be overcome merely by the selection of a separate interLATA PIC. Indeed, this advantage will only increase in time as more and more states allow intraLATA competition and the remaining MFJ restrictions are lifted. A competitive marketplace cannot tolerate a single line number based card for which the LEC is the default intraLATA carrier.

While AMNEX does not believe that the Commission should impose a uniform calling card format on the marketplace, i.e., force carriers to issue either 891, CIID or 14 digit line-number based cards, it clearly must ensure that the LECs do not use their current technical inability to perform 14 digit screening and store multiple PIN numbers against a line number in LIDB as a shield from competition. At a minimum, it must require the LECs to offer 14 digit screening. Anything less threatens the very core of a competitive operator service marketplace.

D. BPP Will Create An Inhospitable Environment For Carriers Without Nationwide Operations

The Further Notice states that while carriers offering only high commissions and not offering attractive end user rates will have a difficult time competing in BPP environment, small OSPs with low rates or high quality service should be able to attract customers under BPP. The Notice states that, like small players in the 800 market, these OSPs can concentrate initial marketing efforts on business customers and offer nationwide originating capability through a secondary carrier.¹⁷

However much the Commission may want to believe that small, regional operator service carriers can function successfully in the BPP environment, the fact is that the marketing and network requirements imposed by BPP present formidable barriers to entry for third tier carriers seeking to serve the transient user marketplace. Similarly, while the concept of partnering with a secondary OSP may appear to permit small or regional carriers to participate in the operator services marketplace on a nationwide level post-BPP, AMNEX does not believe this concept will in fact prove technically feasible, and in any event will be very complex to develop and implement.

Even in the simplest of scenarios, each call will need to be

¹⁷ While conceding that OSPs without 1+ offerings will be at a disadvantage that if large numbers of consumers choose their 1+ carrier for OS, the Further Notice states that if consumers prefer to use their 1+ carrier for OS, it does not believe that it should deny them that option. Id. at ¶32.

screened three times and switched three times.¹⁸ Most importantly, the caller has had to wait while three different carriers performed three separate database look-ups and switched the call three times. In contrast, the current system of access code dialing directs the call to the correct IXC network in the first place, perhaps increasing dialing time, but clearly providing quicker call set up time.¹⁹ The added costs, not to mention the call set up time, inherent in a "BPP with partner" situation clearly outweigh any benefits the caller may gain by not having to dial an access code.²⁰ Finally, partnering creates a host of practical business problems. Whenever multiple networks and switches are used to place a call, the potential for fraud increases exponentially. Confidentiality issues also arise, as carriers are required to share customer identification and information with each other in order to facilitate the partnership. More fundamentally,

¹⁸ Once by the LEC, once by the secondary OSP and then again by the PIC'd OSP whose network contained the specific enhanced feature or functionality that the customer wanted in the first place.

¹⁹ It is important to note that the marketplace is moving towards use of so-called "swipe" technology in telephones located in high volume transient locations such as airports. Once the card is "swiped" through the phone, the customer's billing information is automatically recorded; the customer only has to dial the destination number. This technology would be of no effect with a calling card issued in the BPP environment; however, if combined with access code dialing, this technology would provide the consumer with the same benefits as BPP -- uncomplicated dialing, the carrier of choice and numerous competitive alternatives.

²⁰ Given this complexity, should the Commission implement BPP, the secondary carrier selection must be made by the primary OSP and that OSP must have the choice of whether it designates more than one secondary carrier.

the need to "partner" forces carriers into a business relationship which they otherwise might not undertake, a relationship complicated by the need to share what is considered proprietary customer information which could be used against the issuing carrier in the event of a business dispute.

If they work at all, secondary PICs are only useful with LEC cards, and then only if the secondary PIC is a carrier with a nationwide network. Thus, it is most likely that small carriers will end up handling only a small percentage of the traffic and that the "big three" carriers will handle the lion's share of the calls. Accordingly, the promise of robust 800 service-like competition is unlikely to develop if BPP is implemented.

* * * *

In the final analysis, the implementation of billed party preference may simply create a monopoly larger than the one it was intended to disperse. By interposing the LEC on all alternatively billed calls, billed party preference exacerbates the complex regulatory dilemma facing the Commission, Congress and the industry whenever the LEC is both the provider of a bottleneck, essential service and a competitor in the provision of enhanced services. Moreover, by requiring all 0+ and 0- calls to be handled by the local exchange carrier, BPP ignores the role competitive access providers and other local exchange competitors can play in promoting competition in the 0+ marketplace, preventing them from participating in that marketplace and forcing them to send their intraLATA traffic to the LEC as well. This creates trunking and

other network inefficiencies akin to those noted below for interexchange carriers and curtails the growth of local exchange competition.

E. BPP Will Require Substantial Network Re-design and Increase Access Costs

Implementation of BPP will require all IXC's and CAP's to undertake fundamental re-design of their networks. By forcing carriers to obtain nationwide originating FG-D access in place of existing FG-B and 800 service arrangements in order to participate in the public communications marketplace, BPP increases the costs for third tier carriers and threatens to further entrench the established carriers (AT&T, MCI, Sprint) who have a large, nationwide 1+ marketshare and established, nationwide FG-D originations. Indeed, BPP virtually assures these carriers a 0+ marketshare equal to their 1+ marketshare. In addition, as the only carriers able to offer a wholesale access product on a nationwide basis, the customers they do not get directly they will get indirectly through their resale operations (assuming they continue to offer such services at reasonable prices once BPP is implemented). This result clearly acts to stifle competition and threatens the entire competitive public communications marketplace with a government induced triopoly.

Under BPP, third tier carriers will have to completely redesign their networks not only to replace FG-B and 800 facilities with FG-D facilities, but also to add new trunks from the LEC OSS in order to accept originating BPP calls. This will result in substantial stranded investment. It will also require carriers to

incur LEC imposed network reconfiguration costs.

While some LECs allow IXCs to upgrade their FG-B facilities to FG-D facilities, others require that service be disconnected and reestablished. Who bears the cost of this reconfiguration and stranded investment? What about long term contract commitments for FG-B and 800 service -- who will pay the penalties which arise when minimum commitments are not met? What will happen to the carriers whose business was based on providing such services?

Most importantly, BPP will require carriers to establish new trunk groups to the LEC OSSs in order to receive originating calls. However, the existing trunks to the LEC access tandems will still be needed for terminating traffic and 1+ originating and terminating traffic. The result of BPP is that carriers can no longer have two-way trunks; they are forced to deploy separate trunk groups for originating and terminating access. The inefficiency caused by this separation of originating and terminating access trunk groups will hit hardest against third tier carriers. Such carriers typically have more modest traffic volumes and rely on common transport facilities. What limited opportunities they do have to deploy the more economical dedicated facilities (DS-1 or DS-3) will be further eradicated by BPP's virtual elimination of two way trunk groups.

**III. If BPP Is Implemented, The Commission Must
Adopt Ballot and Allocation Rules and Take
Other Steps to Assure That IXCs Have Complete
And Accurate Marketing Information**

If the Commission decides to implement BPP despite its tremendous costs, both monetary and robust competition, AMNEX

agrees that all telephone subscribers should be required to make an affirmative choice of 0+ carriers via a ballot. Only full balloting will educate consumers about their choices and prompt them to make a conscious decision about their 0+ service. Balloting was chosen as the most appropriate vehicle for 1+ presubscription and 0+ presubscription at LEC owned payphones; 0+ presubscription in the BPP environment deserves no less.

However, AMNEX does not agree that consumers who do not affirmatively choose a 0+ carrier should be defaulted to the 1+ carrier. This disadvantages smaller carriers or carriers who do not offer 1+ services and makes it impossible for them to compete with the big three. Instead, as in the 1+ and payphone environment, consumers should be allocated to participating carriers in accordance with their percentage of presubscribed phones. Unless this occurs, BPP will not have conferred a true competitive benefit on consumers; it will have merely entrenched 1+ marketshare. This is particularly true where the dominant carrier continues to hold not only the largest 1+ marketshare, but also over 75% of the existing 0+ marketshare and where only a handful of carriers have nationwide FG-D originations. Only allocation will temper this dominance.

In addition, default to the 1+ carrier would compel all 1+ carriers to enter the 0+ business -- either by serving their customers directly or partnering with an OSP. Non dominant carriers should not be forced to enter a marketplace they do not wish to serve; this goes against the very essence of competition --

free market entrance and exit. Nor should the Commission be in the position of dictating a carrier's business or product line.

In tandem with the balloting procedure and the need for nationwide uniformity, the Commission must also ensure that presubscription is implemented in a standardized, neutral manner. As such, it should draw upon the lessons of previous presubscription efforts and correct persistent problems before they occur.

The biggest problem is probably the accuracy and timeliness of the LEC databases provided to IXC's for use in the presubscription process. These lists have been notoriously inadequate, containing information which is out of date and just plain wrong (i.e., deceased subscribers, long-departed business owners or contact persons, whole groups of phones "forgotten" or "overlooked" during the initial process). Prior to implementing new presubscription, LECs should be required to revise and clean up their databases to ensure they are accurate. Once "clean", the lists must be provided to IXC's in a timely manner, with sufficient lead time before the actual balloting occurs to enable IXC's to engage in meaningful marketing activities. A minimum of 120 days must be provided between the time the lists are received by the IXC's and the time the initial ballots are sent to consumers.

The Commission must also ensure that the costs associated with obtaining these lists are just and reasonable, and available to all IXC's on a non-discriminatory basis.

Similarly, ballot results must be provided to IXC's in a timely

manner and in a form usable to them. LECs should assume full responsibility for the costs associated with customers they misallocate or mis-assign through central office translation errors -- errors quite common with prior presubscription efforts.

If carefully planned and with proper oversight separate O+ presubscription can improve consumer choice and lay the ground work for a robust, competitive operator service marketplace. Done wrong, it threatens to return the marketplace to at best a triopoly and at worst a monopoly.

IV. Conclusion

Implementation of BPP would represent a fundamental restructuring of not only the operator service industry, but also the broader interexchange marketplace. It is completely inconsistent with the goal of fostering local exchange competition. Moreover, BPP threatens to drive small competitors, both regional and product or niche specific, from the operator service and broader interexchange marketplace, leaving only the three largest carriers as the sole non LEC card issuers and/or the only wholesale providers of nationwide originating access for resale carriers.

On balance, the technical, operational, financial and competitive costs associated with billed party preference outweigh the questionable public benefits to be derived from its implementation, especially when less costly alternatives exist. Accordingly, the Commission should not adopt billed party preference. Instead, it should deal with the real problem as identified in the Further Notice -- the high rates at some